S. HRG. 99-825

NOMINATIONS—MAY–JULY

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

MAY 16, 1986

VICE ADM. PAUL A. YOST, JR., TO BE COMMANDANT, AND REAR ADM. JAMES C. IRWIN, TO BE VICE COMMANDANT, U.S. COAST GUARD

JULY 22, 1986

JAMES BURNETT, TO BE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

62-927 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-54

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

JOHN C. DANFORTH, Missouri, *Chairman*

BOB PACKWOOD, Oregon
BARRY GOLDWATER, Arizona
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
SLADE GORTON, Washington
TED STEVENS, Alaska
BOB KASTEN, Wisconsin
PAUL S. TRIBLE, JR., Virginia

ERNEST F. HOLLINGS, South Carolina
RUSSELL B. LONG, Louisiana
DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia

W. ALLEN MOORE, *Chief Counsel and Staff Director*
RALPH B. EVERETT, *Minority Chief Counsel and Staff Director*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

MAY 16, 1986

	Page
Opening statement by Senator Stevens	1
Yost, Vice Adm. Paul A., Jr.	2
Biographical sketch	1
Irwin, Rear Adm. James C	5
Biographical sketch	5

JULY 22, 1986

Burnett, James J	13
Biographical sketch	12
Hammerschmidt, Hon. John Paul, U.S. Representative from Arkansas, statement	11

VICE ADM. PAUL A. YOST, JR., TO BE COMMANDANT; AND REAR ADM. JAMES C. IRWIN, TO BE VICE COMMANDANT; U.S. COAST GUARD

FRIDAY, MAY 16, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253 Russell Senate Office Building, Hon. Ted Stevens presiding.

Staff members assigned to this hearing: Macky Ayers and Brad Gilman, professional staff members; and Jim Drewry, minority staff counsel.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Good morning. On May 30, Adm. James Gracey retires as Commandant of the U.S. Coast Guard. I am sure we will all miss him. He has always conducted himself in a manner befitting his rank and responsibilities. He has served his country and the American people very well.

The President has now submitted to the Congress the name of Adm. Paul Yost to replace Admiral Gracey as the new Commandant. Admiral Yost graduated from the U.S. Coast Guard Academy in 1951. He has been with the agency for 35 years and has served all over our Nation, including Alaska.

Prior to this assignment, Admiral Yost served as the Commander of the Maritime Defense Zone in the Atlantic Division, and the Third Coast Guard District.

The President has also submitted to us the name of Adm. James Irwin to be Vice Commandant of the Coast Guard. Admiral Irwin graduated from the Coast Guard Academy in 1953, has served on both coasts and abroad, and is currently the Commander of the fifth district.

Gentlemen, we welcome you both. If you have a statement, we would be happy to have it.

We will insert your biographical sketch in the record.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF PAUL A. YOST, JR.

Address: Quarters One, Governors Island, New York, NY.

Position to which nominated: Commandant, U.S. Coast Guard; Date of nomination: March 18, 1986.

Date of birth: January 3, 1929; Place of birth: Philadelphia, PA.

Marital status: Married; Full name of spouse: Janice Kay Yost.

Names and ages of children: Linda L. Fetui (33); Paul A. Yost III (31); David J. Yost (29); Lisa L. Yost (26); and Christopher J. Yost (23).

Education: U.S. Coast Guard Academy, 1947–51, B.A., 1951. University of Connecticut, 1956–59, M.S., 1959. George Washington University, 1963–64, M.A., 1964.

Name of employer: 1951—Present: U.S. Coast Guard, Washington, D.C., Coast Guard officer.

STATEMENT OF VICE ADM. PAUL A. YOST, JR.

Vice Admiral YOST. Thank you very much, Mr. Chairman. I would like to summarize my statement, and then submit it for the record.

Senator STEVENS. Thank you.

Vice Admiral YOST. Mr. Chairman, and members of the Senate Commerce, Science, and Transportation Committee, I consider my nomination as Commandant of the Coast Guard as both a challenge and an honor. I am ready and prepared to assume this role, and will provide the faithful and dedicated service our great country has the right to expect.

Before I go further, Mr. Chairman, I would like to thank you personally for your efforts yesterday in full committee action regarding our supplemental.

I believe that among the Coast Guard's top priorities are drug interdiction, military preparedness, maritime safety, and financial responsibility. Balancing these requirements and providing a well-equipped, well-trained force augmented by a Coast Guard Reserve that is ready to help us perform our wartime tasks will be major objectives.

Given the current world situation and the prevailing financial climate, there will be competing demands for Coast Guard services. Assuring that these demands and our resource requirements are in harmony will require the closest of coordination between the Coast Guard and the administration on the one hand, and the Congress on the other.

My professional background gives me a strong basis from which to direct the Coast Guard's maritime law enforcement, military readiness, and maritime safety activities. I have a broad range of peacetime Coast Guard command, managerial, and operational experience, and have considerable wartime operational and command experience as well.

Having served as Special Assistant to the Deputy Secretary of Transportation and as Chief of Staff at Coast Guard Headquarters, I am not new to the policy and budget issues facing us. As Commandant, I will put emphasis on national defense.

Having commanded cutters in the Atlantic and the Pacific, and having served as Chief of Staff in Alaska, District Commander in New Orleans and in my present assignment as Commander, Atlantic Area, I am familiar with almost all areas of Coast Guard activity. Over the past 2 years as Atlantic Area Commander, I have emphasized drug interdiction in major Caribbean operations that have had a significant and longstanding adverse effect on the movement of contraband by maritime routes. I plan that maritime law enforcement emphasis will continue during my tenure as Commandant.

This country's maritime strategy now recognizes the need for strong coastal defense if we are to be assured that essential support

can be provided to our forces and our allies abroad. As Commander, U.S Maritime Defense Zone Atlantic, I am currently responsible to the Commander-in-Chief, Atlantic Fleet, for planning, and during military exercises and contingencies, for conducting, coordinating and controlling integrated Navy/Coast Guard Defense of U.S. harbors, coasts and nearby sea lines of communication. In this command role, I have seen the need to assure the compatibility of our peacetime Coast Guard with the requirements of our assigned wartime missions. As Commandant, I will put emphasis on national defense.

Maritime safety, a longstanding focus of Coast Guard tradition, is as important today as it has ever been. Coast Guard and Coast Guard auxiliary personnel continually demonstrate their competence and dedication when performing arduous search and rescue tasks, and when assuring safe port, commercial vessel and pleasure vessel operations. The mission has been enlarged by the threat of terrorism in our ports and waterways. Also, this mission could be affected by both privatization and user fee issues.

My wife Jan and I are looking forward to returning to Washington where, in addition to my official duties, I look forward to renewing old acquaintances.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you, Admiral.

As you know, I have been very concerned about the readiness capability of the Coast Guard, and on three occasions have been responsible for adding $300 million to the budget from the defense funds in order to assure the adequacy of the Coast Guard's equipment.

Under an agreement that has been reached with the administration and with the committees involved, we have indicated we would no longer continue that practice except in a dire emergency, and would only appropriate funds that are authorized. This means that the Coast Guard must now find a way to more clearly define the impact of defense activities on its budget.

Are you prepared to make that definition so that we can find some rational way to take into account in the budget process the costs of the Coast Guard's defense role and the costs of its civilian responsibilities?

Vice Admiral YOST. I am committed to the principle that the Coast Guard must be treated as our fifth armed force. The methods and procedures whereby we can clearly define the requirements in consonance with the administration's budget are going to be a challenge to find, and I am committed to doing the very best that we can in finding those methods of clearly defining to the Congress our needs in the defense arena.

Senator STEVENS. I believe this committee is also committed to finding a procedure by which the millions of boatowners in this country can contribute to the operating cost of the Coast Guard. Have you given this issue any thought? The concept of user fees is one of the ways. Insurance concepts are another way.

Vice Admiral YOST. I have given some thought to the general principle of user fees, and I can support that principle of user fees. How we translate that into regulations that in fact impose user fees on various segments of marine interests, including boaters, is

something that I have not gotten deeply into; but the principle of user fees I am in support of.

Senator STEVENS. I am working on a new concept now which is similar to the duck stamp system in Alaska. It is in effect, an insurance concept. A person with such a stamp affixed to a vessel would be entitled to services from the Coast Guard, in the event of an emergency, without cost. Those who did not have them would have to pay full cost. That would build a voluntary compliance concept, particularly in the recreational boating area, and thus offset increasing budget costs.

I urge you to give some consideration to finding ways that we can start building up funds to meet the increasing Coast Guard costs of operation and maintenance. That is the main thing.

Let me call now on our chairman. Did you have a statement to make?

The CHAIRMAN. I do not have a statement to make.

Senator STEVENS. Did you have any questions?

The CHAIRMAN. I am happy to see Admiral Yost and Admiral Irwin. I checked with people in St. Louis about the Coast Guard, because obviously it is not only a very important part of our Government with respect to the high seas, but with respect to the inland waterways as well, and they have nothing but the strongest praise for the Coast Guard. I know that Admiral Irwin has been the Chief of Operations in the second district, and my hope would be, Admiral Yost, that under your leadership the Coast Guard would continue to do the same fine work in the inland waterway system.

Vice Admiral YOST. I think the inland waterway system is a major responsibility for the Coast Guard. I think that we need to continue the level of operations that we are doing in the inland waterway systems at this time, and along with the rest of the Coast Guard we also need to continue to look at ways of doing everything we do more efficiently and more effectively, and I pledge to you that we will do that.

The CHAIRMAN. Thank you very much.

Senator STEVENS. Senator Gorton.

Senator GORTON. I have no formal opening statement either, Mr. Chairman. I have had an opportunity to talk to Admiral Yost, and I am delighted at his success in securing this nomination I am convinced that it is going to mean that the Coast Guard will continue to improve upon its already magnificent record across the country, and of course most particularly, Mr. Chairman, in our part of the country.

Senator STEVENS. Senator Ford.

Senator FORD Thank you, Mr. Chairman. I have no opening statement. I might say that the Coast Guard is beginning to look up, if I can use that term. I had several requests for commissions to the Coast Guard Academy this past year, maybe the second time in 12 years, in the last 2 years. So it indicates that there is some interest out there by young people, and apparently it will be that way under your leadership, and let us hope it will continue.

Thank you, Mr. Chairman.

Senator STEVENS. Very good. Would anyone like to join us in photographs with the Commandant?

[Pause.]

Senator STEVENS. Thank you very much, Admiral. When you have half the coastline in the United States in your State, and almost half of the fisheries of the country come from waters off your State, I assure you there is great interest in my State for the health and welfare of the Coast Guard. We are, as indicated to you previously in private conversation, dedicated to funding necessary to meet the responsibilities assigned to your agency, including increased responsibilities in the drug enforcement area.

I do not think anyone realizes the strain on your budget because of the war on drugs. We have to do more to highlight that responsibility because our fishermen do not understand where some of the money is going, and neither do the recreation boaters. The money is going into your activities. We will have to make that fact known in the future.

Our congratulations to you and we look forward to working with you. This committee stands ready to assist you in any way, in carrying out to the fullest extent the responsibilities to which you will be entrusted when you are confirmed. This includes any modification in existing law which might inhibit the performance of these responsibilities.

Admiral Irwin, we are delighted to have you here, sir, as Vice Commandant. Do you have a statement to make?

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF JAMES CLARENCE IRWIN

Address: 301 Sycamore Rd., Portsmouth, Va.

Position to which nominated: Vice Commandant, U.S. Coast Guard; Date of nomination: April 10, 1986.

Date of birth: June 7, 1929; Place of birth: Des Moines, IA.

Marital status: Married; full name of spouse: LaVerne Marie Grapski.

Names and ages of children: Terese (NMN) Irwin (30); Matthew (NMN) Irwin (28); Peter (NMN) Irwin (27); Kathleen (NMN) Chittenden (26); and Julie (NMN) Irwin (24).

Education: Drake University, 1947–49; Coast Guard Academy, 1949–53, B.S., 1953. George Washington University, 1965–66, M.S., 1966.

Name of employer: 1953—Present: U.S. Coast Guard, Washington, DC., Coast Guard officer.

STATEMENT OF REAR ADM. JAMES C. IRWIN

Rear Admiral IRWIN. Senator, I have a prepared statement I would just like to submit for the record.

Senator STEVENS. Why don't you read it.

Rear Admiral IRWIN. All right, sir.

Senator FORD. Mr. Chairman, I move we accept them en bloc, the way this thing is going.

Senator STEVENS. Later I will tell you the story about the new minister, Admiral, but proceed as you wish.

Rear Admiral IRWIN. Mr. Chairman, and members of the Senate Commerce, Science, and Transportation Committee, my name is James Irwin. I am a Rear Admiral—upper half—and just recently completed a tour as Commander of the Fifth Coast Guard District in Portsmouth, VA.

I am pleased to appear before you this morning seeking your approval of my nomination to be the next Vice Commandant of the Coast Guard.

The experience and knowledge I have acquired in 33 years of active service in the Coast Guard qualifies me for this position. I have had a wide range of operational experiences, commanded many units, and held important senior staff positions. In the past 4 years I have been deeply involved in defense readiness. I have also had experience in the intricacies of our budget and limited opportunities to testify before Congress.

In addition to my Coast Guard assignments, I have spent 3 years in the Office of the Secretary of Transportation and 3 years at the U.S. Mission to the United Nations. I have served on each of our coasts, the Great Lakes, the Midwest, the gulf, and have traveled extensively throughout the Coast Guard. I believe I know the Coast Guard.

My strong points are leading people, managing resources, and resolving conflicts. I sense I have the respect of my seniors, my peers, and those junior to me. I believe I have a similar respect from the senior members of the other armed services, business leaders, local officials, and foreign diplomats with whom I have worked, negotiated, or associated.

In addition to my pleasure at having been nominated by President Reagan, I am most pleased at the strong support I have received from Secretary Dole and the Commandant-Selectee Adm. Paul Yost. This would mark the fifth time I have worked with or for Admiral Yost. We make a good team, one that the Coast Guard and our Nation I think can be proud of.

These are difficult times that our Nation is facing as it attempts to balance the budget and at the same time ensure the security and well-being of its people.

I think for the good of the Nation it is important that the Coast Guard retain its three traditional missions of defense readiness, law enforcement, and safety of property and life at sea. I am prepared to assist Admiral Yost in ensuring these essential services continue to be provided in the most cost-effective manner.

In closing, I would like to assure the committee that I look forward to working with you in the years ahead.

Thank you, Mr. Chairman. I would be pleased to answer any questions you may have at this time.

Senator STEVENS. Thank you very much.

First, our ranking member of the subcommittee is here. Senator Inouye, do you have any opening statement or any comments you wish to make?

Senator INOUYE. Thank you, Mr. Chairman.

I have had the opportunity to study the qualifications of both of these distinguished men, and I am pleased to welcome them to the committee, and to assure them of my wholehearted support and cooperation, sir. I look forward to your command of the Guard.

Rear Admiral IRWIN. Thank you.

Senator STEVENS. Admiral Irwin, as I understand this team of yours, you will be the budget man. Is that right? Do you have a division of duties?

Rear Admiral IRWIN. Well, sir, as I would see our team, Admiral Yost and I would be primarily one team, if you will. Our budget is handled primarily in our Office of the Chief of Staff, and yes, Admiral Yost and I would, of course, be deeply involved with it.

Senator STEVENS. Maybe I misunderstood. I thought you would be running the store, and Admiral Yost was going to be overseeing the operations.

Rear Admiral IRWIN. Well, sir, it is my intention that I would relieve him of as many of the burdens as possible.

Senator STEVENS. Some of us who serve on both the Appropriations Committee and the Commerce Committee have a dual role in trying to assist the Coast Guard in meeting its responsibilities I am of the impression that we have had too many last-minute budget crises. Last night was a good example.

We had a battle over putting $10.5 million, back into the operating account. We had made a commitment, and the Coast Guard was part of that agreement, to not take any more funds from the Defense budget this year. This package included $100 million from the Defense account for operation and maintenance, and $375 million for capital accounts, $21 million of which we transferred yesterday. That transfer was in accordance with an agreement that we had worked out with the executive agencies.

It just seems to me that those requests are coming in too late. We have to find some way to utilize the authorizing process, and to assure that the people on this committee are well aware of the needs of the Coast Guard. I want to invite both of you to find some better way to pinpoint the needs of the Coast Guard before we get into the final hour of a markup on the supplemental appropriations bill.

It may be partially our fault, but it is also, I think, part of the system we have been employing. We have to find some way to avoid the uncertainty. I would encourage you to develop a concept whereby the Commandant has a reserve account. We ought not to be in a position where the Coast Guard has to start notifying people that it is closing stations if it doesn't get $10 million. Your operation is too large to be operated in that fashion.

What is your total budget now, Admiral?

Vice Admiral YOST. About $2.5 billion. In OE it is about $1.85, $1.86.

Senator STEVENS. To blow the whistle on $10 million when you are running a $2.5 billion operation means there just are not enough reserves, in my opinion. We have to establish some reserve account for the Commandant to use. I think that you should try to explain that to the OMB. We will do our best, and you should try to explore some mechanism for handling the budget on a macroeconomic basis, rather than on these little items. All of these problems involve $10 million here, $25 million there. Do not misunderstand me. That is big money to me, but there ought to be some way to handle these problems without getting involved in the details on a supplemental appropriations bill.

Vice Admiral YOST. I would hope so, as well. I commit to you that I will certainly work on that, because it is even more disruptive to a field commander like myself who is wondering if we are going to get that $10 million, or am I going to run out of fuel money or something else in the middle of the summer. It is not a way to run a railroad, and we will certainly be discussing it with the agency, the Secretary of Transportation folks, and with the OMB folks who are also here today.

Senator STEVENS. Particularly in terms of the drug area. If I understand the impact on the Coast Guard of the drug enforcement efforts, it does not seem to be fair to put you in a position of having to choose between requests from the drug enforcement people for assistance, and requests for assistance imposed upon your local commanders from recreational boaters during a very heavy holiday season.

It is going to be heavier this year than ever before. Americans are staying home this year, you know.

Vice Admiral YOST. That is true.

Senator STEVENS. You all are going to have a tough year this year.

Vice Admiral YOST. And the drug shipping season in the Caribbean and out of Colombia and the other countries that supply marijuana and other drugs to us comes in the wintertime. And if we fully address that threat in the wintertime, at the very time that we are still concerned over supplementals and whether we are going to be fully funded, it brings us up to the summertime and our major boating season not only in Alaska but along the Atlantic coast, as well, and the rest of the Pacific without knowing what our funding is going to be. That is a difficult thing to handle.

Senator STEVENS. I think I can speak for the committee in saying we would like to help you work out something so that those decisions are handled better. This requires more information about the extraordinary expenses you incur in the wintertime. Here we are in May, almost June, and we were told several entities would have to be closed down if we did not approve $10 million last night. It is there, but it is not always going to be there in this budget process.

This fabric of laws impose impediments now to making snap decisions to increase moneys that will prevent future action of this kind, in my judgment. We have to get longer range signals regarding the budgetary demands of the Coast Guard in performing its duties. We will provide you with all the assistance that you need.

Vice Admiral YOST. Well, we——

Senator STEVENS. Do you have any questions, gentlemen?

Pardon me, I interrupted you.

Vice Admiral YOST. Well, sir, without your help last night I am sure it would not have happened, sir. We ought to know on October, or whenever the budget is approved, what our money is for the year, and we often do. This year it was a considerable amount of money less than we had requested and the President had requested. So you have an opportunity at that time to start shutting down things.

You also have a feeling, with the agreement of Congress, that you ought not shut down things because there will be a supplemental coming, and then the supplemental does not happen until a very late hour. It is a system that does not serve us all that well, and I will certainly work with you, sir, in straightening that out.

Senator FORD. It seems that when Secretary Weinberger finds his $6.2 billion, that is three times his annual budget.

Vice Admiral YOST. That is very true.

Senator STEVENS. Finding it, and having it available to use are two different things.

Vice Admiral YOST. Yes, it is.

Senator FORD. It was made available so we could use it.

Senator STEVENS. Are there any other questions for the Admirals, gentlemen?

Senator Inouye.

Senator INOUYE. It is a strange coincidence, Mr. Chairman, but in my study of your background and biographical sketches, I note that none of you have served in the Pacific. Is that correct?

Vice Admiral YOST. No, that is not correct, sir. I spent one tour of duty in Hawaii, my first tour of duty. I then spent my second tour of duty in Guam. I spent my third tour of duty in Hawaii. I then came back several years later and spent a tour of duty in San Francisco, and then spent a tour of duty in Vietnam. So I am very familiar with the Pacific. Then I went up and spent a tour of duty in Alaska as Chief of Operations and Chief of Staff, where I got to know Senator Stevens quite well.

Senator INOUYE. You would have made points if you had listed that down here.

Vice Admiral YOST. I stand corrected. I am much smarter now than I was 3 minutes ago, sir.

Senator STEVENS. As you can see, Admirals, you have the Missouri and Kentucky navies behind you, and the Pacific is ready to accept you. We will be happy to serve with you.

Thank you very much, gentlemen.

Vice Admiral YOST. Thank you.

Senator STEVENS. We will recommend to the full committee that we report the nominations out forthwith. Thank you very much. Before the record closes, I would note that Senator Packwood might have questions to submit to the two Admirals.

Thank you. That closes the record in this hearing.

[Whereupon, at 9:55 a.m., the committee was adjourned.]

JAMES BURNETT, TO BE CHAIRMAN OF THE NATIONAL TRANSPORTATION SAFETY BOARD

TUESDAY, JULY 22, 1986

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met at 2:05 p.m., in room SR-253, Russell Senate Office Building, Hon. Nancy Kassebaum presiding.

Staff members assigned to this hearing: Steve Johnson, staff counsel; Gerri Hall and Ruth Johnson, professional staff members; and Steve Palmer, minority professional staff member.

Senator KASSEBAUM. The hearing will please come to order.

It is a great pleasure to welcome as the first part of our hearing, which is on the renomination of James Burnett to chair the National Transportation Safety Board, Congressman John Paul Hammerschmidt from Arkansas. Congressman Hammerschmidt has done such a fine job with aviation issues in the House and I enjoy working with him as we discuss various issues of concern regarding aviation safety and the health of our national airway system.

Congressman Hammerschmidt.

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, U.S. REPRESENTATIVE FROM ARKANSAS

Mr. HAMMERSCHMIDT. Thank you very much, Madam Chairman, and thank you for allowing me the privilege of appearing before your subcommittee to endorse the reappointment of Jim Burnett as the Chairman of the National Transportation Safety Board.

I recognize, however, that no member of this committee needs to be furnished with detailed information on Jim Burnett in view of the diligent manner in which this committee has involved itself over the past years in overseeing the operation of the NTSB.

As I believe you all recognize, during his tenure as chairman, Jim has become a very effective spokesman for the Safety Board and for transporation safety in general. In this context, I would like to read to you an excerpt from a letter that the president of the Airline Pilots Association recently wrote to President Reagan in recommending Jim's reappointment as chairman, and I quote from that letter.

Accident investigators and safety representatives within our organization have found Mr. Burnett to possess the necessary attributes to fill this position. I believe the transportation industry has been and will continue to be well served by his dedication to correcting safety problems.

In another letter of support, a constituent of mine who is an attorney involved in aviation litigation wrote to President Reagan as follows:

> As a graduate aeronautical engineer, a pilot, former Air Force officer, frequent user of the commercial airlines, and an attorney, I am vitally interested in the safety of both the general aviation fleet and the commercial aviation fleet. Mr. Burnett's office has brought to this arena a breath of fresh air in examining the safety of the operation, maintenance and manufacture of the aviation fleet. There has been no other voice speaking clearly to the point on these issues until Mr. Burnett arrived on the scene.

Those comments, Madam Chairman, are typical of many I have received concerning Jim's performance as Chairman of the NTSB. In my opinion, they mirror the confidence the users of our transportation system have in Jim and the National Transportation Safety Board. To have earned such credibility with people who are most directly affected by whether or not our transportation system is safe seems to me to be praise of the highest order.

Let me also say that as ranking member of the Aviation Subcommittee of the House Public Works and Transportation Committee, I have had the opportunity to monitor closely the operation of the Board under Jim's leadership. Its outstanding performance during a critical period is, to me, indicative of the exemplary job that Jim has done.

Madam Chairman and members of the committee, I thank you for your time and hope that you will share my belief that Jim Burnett should be confirmed as Chairman of the National Transportation Safety Board.

Thank you so much.

Senator KASSEBAUM. Thank you very much for coming over and giving those fine words of testimony and of introduction. As I say, I certainly value working with you, and I know that you have been a staunch supporter of the strong leadership of Mr. Burnett and the National Transportation Safety Board. I think both of us highly value the work of the NTSB and appreciate your being with us.

Mr. HAMMERSCHMIDT. Thank you. If you will excuse me, I have another 2 p.m. meeting, and I will go on to that one. Thank you so much.

Senator KASSEBAUM. Thank you very much. We appreciate your coming over.

I have your biographical sketch that I will include in the record.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF JAMES (JIM) BURNETT

Address: 108 Thomas Street (P.O. Box 147), Clinton, AR 72031.
Position to which nominated: Chairman.
Date of birth: September 20, 1947.
Place of birth: Little Rock, AR.
Marital status: Single.
Education: University of Arkansas Law School, 1969—Juris Doctor—1973; University of Arkansas, 1965—Bachelor of Arts with 1970 major in Political Science.
Employment record: From 1973 to December 1981; Self-employed, Clinton, Arkansas; Attorney at Law. December 1981 to present; NTSB; Washington, DC.
Government experience: Chairman, NTSB, March 1982 to March 1984; May 1984 to May 1986; Vice Chairman, NTSB, January 1982 to March 1982; March 1984 to May 1984; Member NTSB, December 1981 to January 1982; May 1986 to present. Special Associate Justice of Supreme Court of Arkansas; February 1981. City Judge, Damascus, Arkansas, 1979–81. Municipal Judge for Clinton, AR, and Van Buren

County, 1975-79. Rule 71A Commissioner, United States District Court, Eastern District of AR, 1974-78. Juvenile Judge, Van Buren County, AR, 1973-81. Congressonal Intern for Congressman John Paul Hammerschmidt, summers, 1967-69.

Senator KASSEBAUM. Mr. Burnett, do you have any opening statement or comments you would like to make?

STATEMENT OF JAMES J. BURNETT

Mr. BURNETT. I have one and I will also make a few remarks, Madam Chairman.

It is good again to be before this committee for the fifth time seeking confirmation to a position on the National Transportation Safety Board, the fifth time in less than 5 years which must be some sort of record. It has been a pleasure over the last 5 years to work with this committee and with the other committees of the Senate and the House. All of them have reflected a great deal of concern not only with aviation safety but the safety of our Nation's transportation systems in general.

It has also been a pleasure to work with my distinguished colleagues who are members of the National Transportation Safety Board and with the fine men and women of the Safety Board staff who give deeply of their time and at awkward times and under awkward circumstances to protect the safety of the American people.

Madam Chairman, we are very pleased at the Safety Board that during the last 2 years since I last appeared before this committee for confirmation as chairman that we have achieved great things in the area of aviation safety.

We have had the fruition of much of what the Board has been working toward for years in the area of aircraft cabin safety. We have projects under way which will improve the crashworthiness of general aviation aircraft. We have seen the FAA begin the first steps at rulemaking for stronger seats in air carrier type aircraft within the last week, as well as the new fire safety standards.

We have seen, for the first time, the adoption of rules dealing with the problem of alcohol and drug abuse on the railroads, and we have seen a great deal of progress that we have helped lay out the plan of the States in dealing with alcohol abuse on the Nation's highways.

All of these things are things that we can be proud of at the Safety Board. We have a lot of plans for the next couple of years, including looking at the issue of pilot training and qualification, truck driver training and qualification which we have just issued a report on and which will be one of the major goals of the Board during the coming couple of years.

Also, we have the issue of adding cockpit voice recorders and flight data recorders and modernizing the ones that are there for our Nation's commercial air fleet so that we will have more objective information and faster information in the conduct of our investigations.

We need to rework the classification system for hazardous materials which, as has been recognized for 20 years, is totally inadequate to do the job that it is supposed to be doing in the area of hazardous material safety but in which there has been very little progress. We now hope, because of increased interest on the part of

62-927 0 - 86 - 2

the public, that we will be able to make progress over the next couple of years in that area.

So it is an exciting time to be at the leadership of the National Transportation Safety Board. We are proud of what we have done and look forward to even greater things in the next 2 years.

Thank you, Madam Chairman.

Senator Kassebaum: Thank you very much.

I have several questions which I would like to ask. The Air Transport Association states that without warning in March of this year, NTSB issued a rule which prohibits parties involved in an accident hearing from the benefit of legal counsel. The ATA claims that accident hearings are public hearings with the purpose of determining cause or probable cause, and that a determination has great impact on public perception and potential litigation related to an accident.

Accordingly, ATA believes that legal counsel should be allowed to participate. Could you give me your analysis of this issue and explain why the decision was made by NTSB?

Mr. BURNETT. First, we have not prohibited parties appearing before the Board to have legal counsel. In fact, the rules provide that during our public hearing any witness can have such counsel or advice at the table with them that they designate. In fact in the conduct of the hearings that I preside over I always ask for legal counsel to be able to ask any clarifying questions at the end of his client's testimony.

What we have done is make the decision that parties to our investigations cannot be represented at our public hearings by lawyers, people who are in the function of legal counsel to them. Now, when the ATA says this has an impact on litigation and, therefore, they should have their lawyers available, they are neglecting to say that only the manufacturers and the carriers generally among those parties involved in litigation and the FAA are even allowed to participate at all in our hearings.

So they have had the privilege of bringing their lawyers in and their lawyers being able to make a record as to everybody else but the claimants not being able to participate with their lawyers. This would be a far different thing if we had a situation where all the lawyers and everybody's lawyer had been allowed to participate and now not all of them are being barred.

It has been a fact that only because some potential litigants are permitted to even participate in our investigations, we do not think that it is right for them to be able to bring in people who are preparing for litigation.

So, the ATA, in making that point, focuses on the very reason that we have to make this decision in order to cease to be unfair to claimants and other people who might have interests contrary to the carriers and manufacturers.

Senator KASSEBAUM. Has that been always? Is this a new interpretation of representation?

Mr. BURNETT. Yes, it was Board action taken. We have long had the policy of trying to keep our investigation separate from the litigation process. We have had some lawsuits in which we were not satisfied with the legal position that we were in which involved whether or not we would be able to allow lawyers to come in and

participate when their opponents in litigation that was proceeding could not get it.

We felt it was better to focus our activities on nonlegal types of approaches. There are two of us currently on the Board that are laywers, but we also have two that are nonlawyers. Lawyers frequently, in the conduct of the hearings, would try to bring in legal rules of evidence, and it is very difficult to deal with that sort of thing in a proceeding that is not a legal proceeding.

Senator KASSEBAUM. Is this the same reasoning that you used in not allowing observation at an accident site by all parties concerned?

Mr. BURNETT. That has never been done, and there is no change in our rules on that. Basically, the situation that we had is that we had some very uneven administration of the Board's rules as to who had access to party status, who had access to the site. Some of our investigators were very free in allowing access. Others were not.

Some of our investigators, unfortunately, were glad to have anybody to help them do their work. I say only some because there were very few of those. We had to, because of the legal pressure we were coming under, reassert some consistency in that process. There has been some disagreement among the industry on all sides and disappointment that they no longer have had the free access that some people's practice had given them.

It has been necessary, and this has been true of the Board's rules since as long as I have acquaintance, that we not allow insurers and claimants to participate in the Board's investigations. The reason for that is that their only interest in participation is litigation.

We, by the instructions of Congress, are to maintain our investigations separate and apart from litigation. To allow those people to participate or allow some of them to participate and not everyone is very unfair. In fact, because of misrepresentation of their situation, we have some insurers who were having extensive access to NTSB investigations while other insurers had much less. The claimants that were in lawsuits with that insurer had none.

It was not fair, and it was not right. We have ended that, and it took us some investigation and some fortuitous circumstances that shed a lot of information on the subject to come up with information that we needed to bar some of the people who were participating.

We have made one change in the rules on that. We have said that manufacturers' representatives must be employees of the manufacturers. Now, in many of our investigations the only party other than the FAA that participates is the manufacturer. The only justification we have for that is that we often have to have the expertise the manufacturer has in their individual product in order to complete the investigation in a timely fashion.

If the manufacturer is having that privilege of participating and sending to us someone who is not even a full-time employee of theirs and, therefore, is not likely to have that very specialized expertise that we need, in my view it is an abuse of the process.

The Board came to a unanimous conclusion that, in fact, we should not continue to allow that to happen. The manufacturers

have all been asked, and we are enforcing it only to send full-time employees, people who have that kind of knowledge and investment and involvement with their individual product. We are very pleased with the outcome of that.

Senator KASSEBAUM. I certainly can appreciate the need to find some consistency that would lend the Board, the credibility and the credentials necessary to make an objective and thorough report.

As you know, and I think this has come up in previous hearings, there have been allegations that evidence has been lost or destroyed during investigations. I wonder if you believe that this is still a recurring problem or concern. Was it ever, do you think? Do you feel confident that you have made the case and that this is really something that the Board has clearly——

Mr. BURNETT. To my knowledge, we have only had one case, and it is a very unfortunate case in which any evidence was lost or destroyed by the Safety Board. That was where two small parts were forwarded by one of our investigators in a large envelope with a form in it. It was forwarded for laboratory examination. The form was taken out. The secretary who did that did not realize that these two very small parts were in the bottom of the envelope and threw the envelope away. We have taken steps to keep that from ever happening again. So it has not been, to my knowledge, a problem.

Now, sometimes when people make complaints about evidence being destroyed, they are talking about it being destroyed after the Safety Board has released it to its rightful owner when we are through with it. Of course, there are other parties in the litigation other than the rightful owner of the wreckage who very much do not want to see that turned back over to its rightful owner when we are through and would like to see it kept impounded.

If we were to take on the responsibility for doing that, we would have a major warehousing expense every year for all of this wreckage in which litigation continues for several years. It would probably double the Safety Board's budget, and we cannot undertake that responsibility. We often have people who are dissatisfied that they do not have access to it before we are through with it.

Senator KASSEBAUM. I know that the morale at NTSB has also been a recurring worry, and we have discussed this before. I think you, yourself, have indicated that you have lost some of the skilled technicians there.

I wonder if you feel this is hampering your effectiveness in reports. What are you doing to try and rebuild the morale and the desire of skilled technicians to come to the NTSB?

Mr. BURNETT. We have certainly, and have had, a higher attrition rate historically than we would like have, given the difficulty of finding the kind of highly qualified technical people that it takes to do our work.

In the area of aviation, where there has been a lot of comment on this, we have had a fairly flat attrition rate over the last several years, the last 3 years anyway since the major RIF, of course, when the attrition rate was very high.

We have had substantial increases in our attrition rate among our surface employees and among our clerical people. To give you some examples of how this happens, we had recently one of our

secretaries who developed into a very fine secretary who was offered a job at $5,000 more a year by private industry. It is hard to compete against that.

We had one of our railroad investigators in the Chicago office who got a job as director of safety for a railroad or a rail-type operation at $10,000 a year more than we were paying him.

The fact is that the Government pay structure simply does not allow us to compete when someone targets one of our people for a private industry job.

In addition, the Federal Aviation Administration and NASA, and particularly the FAA, may not be quite as scrupulous about observing the OPM regulations as we have to be, a small agency that could easily be investigated and busted by the OPM.

We have had some morale problems arising from, first, difficult working conditions. Most of our people are overworked. Most of our field accident investigators, I guess, on the average are doing more than 20 investigations a year. Talking about the full field-type investigations, that is more than they ought to have to do. We have had to do that in order to be able to keep up with our work and be sure that the crucial information involving public safety was not bypassed or left unattended. We have some of that same type of problem within our Washington office, and we are very sensitive to that.

Also, our people work under very difficult conditions, and that is probably unavoidable. They are on call, especially in those areas where we have only one or two people in a particular technical discipline. They are subject to being called almost anytime during their lives. They cannot escape us. They go on vacation, and sometimes we have to call them. That is a very unfortunate circumstance.

By the same token, when they are called they go into an area in which sometimes they have to burn their clothes after they are through because of the conditions under which they are working. So you have to have very dedicated people to do what we are doing and sometimes who are willing to turn down more money to do it.

I think, however, that because of the achievement that the Safety Board is making, that more than anything contributes to the morale of our people, to have a satisfaction about what you are contributing to the welfare of the American people. For that reason, I think that we are doing a good job under difficult circumstances in being able to recruit. It is, as I say, very difficult, but we have, I think, been able to attract very fine, aggressive people.

I think that some of the raiding that we see going on is because our people are more attractive than they used to be to people who are looking for fine, outstanding employees.

Senator KASSEBAUM. I have just one final question.

There has been over the last couple of years a great deal of concern about filling the Board and who would be Board members. The question of technical expertise has been one factor. You did not come to the Board with a background of technical expertise but have certainly acquainted yourself well with the issues at hand through your service as Chairman.

Would you feel that in the future technical knowledge and expertise should be a qualification for Board membership?

Mr. BURNETT. No. I think our Board unanimously has, since I have served on the Board, opposed the proposal that all members of the NTSB have technical qualifications.

I think it is a very great value to the Board to have people who are brought to the Board outside of the industry. I do not think all of us should be outside of the industry, but I think it is helpful to have some who come with fresh ideas and a willingness to critically examine some of the sacred cows that each one of the transportation industries we deal with have.

I think that has been very important to the contribution that not only I have made to the Board but that Vice Chairman Goldman has made to the Board. I think we certainly believe that we need people with technical background as part of the Board's deliberations, but we need a variety of backgrounds.

I think, to the extent that some Board members have had problems, it sometimes has arisen from a lack of a sense of public policymaking and their role in relation to it more than it has been the lack of technical knowledge.

Senator KASSEBAUM. Thank you.

Senator Exon.

Senator EXON. Madam Chairman, thank you very much.

Mr. Burnett, I want to welcome you here today. Let me ask a few questions. I am going to support you in your efforts to be confirmed again as Chairman. I think you have done a good job. Let me ask a few questions to see where you are going to go in the future.

How long have you served as Chairman of the National Transportation Safety Board?

Mr. BURNETT. I have served two 2-year terms, 4 years, and a little time as Acting Chairman also in addition to those 4 years, so a little over 4 years.

Senator EXON. The renomination we are considering now would be for how long?

Mr. BURNETT. For 2 more years, sir.

Senator EXON. So this is renewed every 2 years, is that correct?

Mr. BURNETT. That is correct.

Senator EXON. The other members of the National Transportation Safety Board, to refresh my memory, have similar terms? Are they staggered terms?

Mr. BURNETT. There are five of us appointed to 5-year staggered terms. I am also serving currently a 5-year term as a member of the Board, and that term will expire at the end of 1990.

That is the reason that I, because of the way that works out, that I have been here for confirmation five times in 5 years.

Senator EXON. When you are confirmed, and I am quite confident you will be for another 2 years on the Board, are there any significant changes that you would like to make for the next 2 years based upon your experience?

Mr. BURNETT. Changes in the Board?

Senator EXON. In anything. In other words, what I am asking is now that you have had some experience, do you think things are best left alone as they are, or do you think that the improvement of the Board could be improved either as a chairman or a member thereof?

Mr. BURNETT. Well, I think the Board is operating and has been operating ever since I have been there under very marginal resources. We have elected to ask the OMB—and of course our request to the Office of Management and Budget is always forwarded, as the law requires in our case, directly to the Congress—for 347 positions and the financial level, money level that would support that.

Every year since before I became Chairman, we have considered that as a bare bones type of budget and, in effect, a compromise because we prefer to have a stable budget even at the expense of forfeiting some of what we might be able to get because it is so hard on the technically-oriented agency with highly technical requirements, manpower requirements, to flex up and down.

We have not even been funded at that level. Certainly, I would want to be looking at some strategies to see that we have the resources that we need in order to do the jobs. As I reflected already in my statement, I think some of our people are having to work harder than they should have to.

Senator EXON. Let me follow up on that, if I may. What you are really telling us is that you believe the Board is underfinanced and undermanned at the present time?

Mr. BURNETT. We do not have the people we need now to do the job that we are being asked to do.

Senator EXON. So you will be pressing for some additional funds?

Mr. BURNETT. I do not know that we are going to increase what we are asking. The Vice Chairman is going to testify on our authorization proposal. The Acting Chairman, excuse me, is going to testify on that following my testimony. We are asking for 347 as we had previously been authorized. We have not, with the exception of 1 year, been appropriated at that level. In the year that we were appropriated, we could not hire up to that level because of the difficulty in obtaining personnel.

Senator EXON. You had a second part you wanted to go ahead with. Why not go ahead with that?

Mr. BURNETT. We have had some discussion of some of the things that might be done to improve the Safety Board's work. I have already mentioned cockpit voice recorders and flight data recorders in regional airline-type flights as well as improved technology that can be incorporated in major carrier-type airplanes in these areas that the Board is very anxious to have so that it can do its job faster and easier.

I am personally hopeful that at some point there will be legislation that will require the FAA to get in step with the Safety Board's recommendations in that area and with the international standards that have been adopted. I think that is certainly one of our major priorities.

There has been a lot of examination of whether we ought to be doing public use aircraft. The whole area of nonmilitary, civilian, governmental, either Federal, State or local aircraft, that are not being investigated, accidents are not being investigated except under situations where they ask us to do it. I think we ought to be doing that.

If we had the funds and resources to do it, it would probably require 15 additional people to take over all of those additional acci-

dent investigations, but I think the public safety would be well served by that investment.

Senator EXON. At least as one member of our subcommittee, I am increasingly concerned about aviation safety. The chairman has been good enough to call several hearings that we have held on the overall matter of air safety. Let us talk about air safety first.

We had one such hearing last week. I do not know whether you heard or knew about it, but the basic thrust of that hearing was that many of us feel that since deregulation, despite their best efforts, the FAA has not had the sufficient personnel to either man the towers adequately and/or—and probably equally, if not more important, the number of people necessary to do the followup job to see if inspections are being properly made.

In this era of deregulation where we have got more aircraft flying more hours with more people certainly than any other time in history, I think that members of the subcommittee generally feel that there is something lacking in that particular area right now.

Do you think our feelings are justified or not?

Mr. BURNETT. I think they are most certainly justified. I will deal with the last subject first.

In the area of FAA surveillance of the airlines, we held a public hearing after the accident involving Air Illinois in 1983 which I think was very important in focusing public concern on the quality and adequacy of FAA surveillance since that time, and I think the FAA has done a lot of thinking and planning and that they have a much better idea of what their duties are in the time of the deregulated environment, what they are going to have to do to make their surveillance system responsive.

They have made requests which are, I think, going to be supported for additional personnel. Probably the personnel that they are seeking right now will not be entirely adequate, especially if we see the continued growth of the aviation industry, but it will be as many as they will be able to hire, I can say, in the present job market in aviation-related specialities. And I think we will see a lot better surveillance and I am very pleased that effort is going on to that effect.

It is not in place yet and we are not yet experiencing the improved safety that I think will come from it.

In the area of the adequacy of air traffic control personnel, it is a continuing concern of the Board's. We have recently sent investigators out to look at a couple of incidents at O'Hare Tower in Chicago and we found substantial increases over the last year in the traffic that is being handled by virtually the same number of controllers, and that is a matter of concern to me and I have expressed that concern many times. I hope that the FAA will begin to get a better handle on it than I think they have.

Senator EXON. Thank you.

I believe I could sum up, Madam Chairman, by saying I suppose that Mr. Burnett has kind of summed up what I think is the feeling of yourself and myself and others on the committee. That is that we are not saying the FAA is doing a particularly bad job now. But I think we feel that the FAA just have not kept up to speed on this very important matter since deregulation especially

with the increased traffic as you have indicated is going to face us in the future.

Let me shift for just a moment—then I will conclude—to rail safety. I am thinking particularly of movement of hazardous material, hazardous waste that basically handled by railroads.

Correct me if I am wrong. I am a layman. But it seems to me that I hear more and more of this proposition where a train derails for some reason and highly toxic chemicals are spewed out of a ruptured tank car of some type. Are there more of those accidents, or are they just better publicized than they were before?

Mr. BURNETT. Well, in fact, there have been less of the accidents and I think one of the reasons there have been fewer of the accidents is because the Federal Railroad Administration has responded to Safety Board recommendations for providing additional protection for tank cars.

However, one of the things we are experiencing demographically in this country and we notice it very frequently, that there will be a toxic chemical leak, but it will be somewhere in some remote area where there is not much chance of hurting anybody. But there are not as many remote areas of the country as there used to be, and every time one of our cities expands out another 5 miles and takes in another big chunk of the Nation's very important transportation network, we increase the chances of a hazardous materials accident, that it is going to massively impact upon the public.

And we have seen that most recently in this record evacuation that took place at Miamisburg, OH and I think we will see more of it. That is the reason that even though the number of accidents have been going down, we think that we must have even greater vigilance.

You know, the substance that was involved in Miamisburg is by no means the worst, from the worst, that is being moved. We move, for instance, methyl isocyanate which was involved and killed 2,000 people following the Bhopal accident, and things that are as bad, perhaps worse, are being moved in our Nation's transportation system by truck and by rail. And we do not have in place in my view all of the protections that we need to have to keep the catastrophic accidents from happening.

One of the reasons we do not is because we have had such a good record. So, therefore, because we cannot look back at the last year and find a lot of hazardous materials deaths or injuries, then therefore we are tempted to rely on that and say this is not a problem. Then when the problem does happen, and it happens in terms of 500 or 1,000, 2,000 people, then we are going to regret that we have not put more emphasis on it. And I do not think that we are getting adequate emphasis.

As I said initially, the classification system we have—I know the DOT is changing this—but methyl isocyanate at the time of that accident over in India was being classified as a flammable liquid in this country. There was no indication on the placards that went with it that it was toxic. In fact, if it got to the concentration at which it would burn, you would not live to strike a match to it. And that is only one example of the many of them that, although they are classified correctly under the present rules, the rules are

not good enough and the regulatory system for those products stem from the classification system.

Senator EXON. Those rules, then, have not begun to be brought up to date to where you think they should be.

Mr. BURNETT. No. There is a Government study, not by the Safety Board, but in 1967 which condemned this whole system as inadequate, and there has been in my view no substantial progress. Marginal progress, but no substantial progress in that 20 years.

Senator EXON. Since 1967?

Mr. BURNETT. That is right.

Senator EXON. That is a shocking figure.

Mr. BURNETT. And what it requires is, it requires the system to be reworked and the Government has not been up to doing that.

Senator EXON. Who is? I assume there is opposition to the forums and notices. Where is that opposition coming from? The suppliers of the material or those in the transportation who move them, or both?

Mr. BURNETT. Well, I think to some extent to both, although I think there is a lot of sympathy among the more progressive of the manufacturers; for instance, the shippers of hazardous materials.

Some of them go way beyond the regulations and it would only be fair to them and they would probably like to see others required to meet the same standards that they are meeting voluntarily. For instance, the only manufacturer of methyl isocyanate in the country fortunately ships their product in a safer container than he is required by Government regulations which would in fact permit methyl isocyanate to be shipped in a riveted, old-fashioned riveted tank car of World War II vintage.

Senator EXON. Well, I hope that you will alert us and do whatever you think is necessary to get the attention of your agency or the other agencies to correct that.

One last question. We have held hearings from time to time on the need to reduce the numbers of crews on our trains. The charge has been made from time to time that in eliminating one or two crew members per train, we are taking an unnecessary high risk for safety. We hear that in addition to riding on that train and carrying out their assigned duties, these railroad personnel have the obligation to check the train over, to continually inspect it to see whether there is something that might have happened that could cause an accident.

The matter of, I think the term is "hot boxes" and things of that nature—do you feel that some of those remarks that we have heard in testimony here with regard to shortcutting or reducing the number of personnel running and operating a train has a seriously adverse effect on safety?

Mr. BURNETT. Well, not necessarily, but it could. It depends upon how it's handled. What the Safety Board has called for in the area of manning the trains is that we believe that there should be on the locomotive of the train, the front end, the operating end, at least two people that are qualified to operate the train.

That would mean two qualified engineers, although we would not necessarily call them engineers if they wanted to take a conductor from the rear end of the train and call him a conductor and train

him to be an engineer, that would be fine with us. We do not want to get involved in these disputes between the crafts.

We think there ought to be two people qualified to operate the train on the front end, and that one of them should be the captain, put in quotation marks, "captain of the train" in the sense that they should be in charge. And the traditional way has been for the conductor to be in charge and he is at the rear of the train, not in our view on the operating end.

Those things, together with improved practical scientific and progressive training of rail personnel which in our view does not exist today, the way that railroads typically train their personnel is to give them a rulebook and have them memorize it and ask questions to see if they can quote it back, and not necessarily, although there has been movement in the right direction among some of the more progressive railroads, not necessarily to actually test them or train them in the application of the rules under a dynamic situation that requires the exercise of judgment and quick decisionmaking.

Senator EXON. Are you saying, Mr. Burnett, that—do I understand you correctly as saying that you have two qualified people on the front end of the train, and you do not need anyone on the front end of the train?

Mr. BURNETT. Well, you either need that or you need some of the technical devices that are being developed. The Safety Board is not opposed to moving people off the rear end of the train, nor have we recommended that it be done. We, however, see especially in rear end collision accidents like the one that happened in your State recently, there is always the potential for those people on the rear end to be rear-ended and they are in sort of an exposed position there.

You know, a caboose that is hit by a locomotive does not have much of a chance. So I think certainly we have never opposed flatly the transfer of people from the rear end of the train, but then there has to be some means developed for handling the impact that it is going to have on operations in a way that would be consistent with safety.

Senator EXON. Are there such devices now available?

Mr. BURNETT. There are devices that are being used by some railroads as a substitute for people on the rear of the train.

Senator EXON. Do you think they are adequate?

Mr. BURNETT. We have taken no position that they are not.

Senator EXON. Have you ever taken a stand one way or the other on the current drive to eliminate cabooses for the most part? We just passed a law in Nebraska by the Nebraska Legislature that I believe says that you do not have to have a caboose on the end of a train unless it is of a certain length.

Has the Safety Board ever taken a firm stand pro or con on that matter?

Mr. BURNETT. No, sir.

Senator EXON. Thank you, Mr. Burnett. I think if we thought that it, in and of itself, were a major safety issue, we would.

Thank you.

Senator KASSEBAUM. Senator Kasten.

Senator KASTEN. Madam Chairman, thank you and thank you also for conducting this hearing on the renomination of James Burnett to be Chairman of the National Transportation Safety Board.

As one of those who has been urging his reappointment and have recommended his reappointment, I am pleased that we are here today and have the opportunity to address you, and I am also pleased that the President has decided to go forward with your renomination.

Although the NTSB is responsible for many transportation safety areas, it is most closely identified with aviation. There is little doubt that there is much that needs to be done to improve and to strengthen the margins of safety for our air transportation safety system.

We had the chance to work together at a public hearing which you, with the Safety Board, had in Milwaukee, WI. You have had a chance to work through that tragic accident and I appreciate the fact that the work that you are doing is done in a deliberate and deliberative way. I feel that under your leadership during that time, we have witnessed a total commitment to the improvement of aviation safety, and I am pleased that I was able to witness firsthand the kind of work that you are doing. I intend to continue to work with you in the future.

I believe that under your efforts the Safety Board has more aggressively advocated tougher standards for the FAA and for the entire airline industry, and I believe that that is the direction that the Congress and the public is continuing to urge.

Some of us went through some reports from the GAO a few days ago when we had hearings before the committee on whether or not we wanted to authorize or to form a new Commission, Senator Byrd's bill on a new Aviation Commission. We discussed some of these GAO issues, but all of the GAO reports have shown time after time after time, and we have gone through a number of them in different forms, there are many serious problems which the FAA has not adequately addressed and thus the margin of safety has weakened.

It is a question about the degree, but I don't think there is any question about the direction. And to your credit, you have recognized those deficiencies and have made important recommendations that could save lives in the future. Some of us are beginning to wonder what has happened to some of your recommendations because some of your recommendations are the same as some of the recommendations that some of us have been making—Republicans, Democrats, House Members, Senate Members.

But I am pleased to support your nomination, and your nomination will have my vote on this committee.

I have been impressed, as I said, by the degree to which the Safety Board has recommended changes in the management of air safety. But as I mentioned again and again, these recommendations have fallen on basically deaf ears at the FAA. Why is it that we seem to have this tension? Why is it that so many of your recommendations have in fact fallen on deaf ears? Why is it that the FAA seems to refuse to enact the NTSB's recommendations even if many of the Safety Board's recommendations are potentially lifesaving?

Mr. BURNETT. Well, I think, of course, we have to recognize that the FAA has the best record of all the agencies that we interact with of complying with the NTSB recommendations, at least of those that we give very many recommendations to. They comply with about 80 percent of them. However, sometimes I think the other 20 percent is the most important 20 percent.

I think that the FAA, certainly institutionally, has the mindset of being responsive to aviation insiders, in my view. There are some advantages to that, but there are also some disadvantages, and I think the concerns, the broader concerns that are represented by the public and the people who are transported and buy the tickets are not as readily responded to by the FAA as some of the concerns of the industry.

I do not think that arises from—I think it institutionally, it is inbred into the institution, and it is not apt to be readily changed other than by close and a great deal of public scrutiny.

Senator KASTEN. But through the authorizing committees and the appropriating committees, do you think that it would be possible for the Congress to in effect take some of the decisionmaking away from the "aviation insiders" and switch the debate at least to a debate that would be in favor of public safety as opposed to aviation insiders?

That is what we are trying to do.

Mr. BURNETT. Well, I would suggest that the aviation industry people who have one perspective are not for public safety. On the other hand, I think the answer to your question is yes, that has been done, because the progress that the FAA has made in, for instance, the issues of cabin safety in the last couple of years has been because the Congress has insisted—the Congress and the Secretary of Transporation, I think have insisted that they make some progress.

And I think that indicates the ability to force them to move under certain circumstances. Unfortunately, it took a tragedy at the Cincinnati Airport in order to focus that sort of concern and attention onto that and to force them to move.

Senator KASTEN. One of the points that has come up in a number of the discussions and also some of the hearings that we have had is the contradiction with the FAA having, in addition to concerns of air safety, the responsibility of promoting—emphasis "promote"—promoting air travel. And they have that in addition to enforcing the regulations.

Do you think that that is part of the problem?

Mr. BURNETT. No, Senator, I do not. I do not think that you can improve aviation safety without promoting the aviation industry because I think it is essential to it. It is essential to convince people to leave the ground to fly, that they are going to be safe.

The same point, I think, that all safety efforts have to incorporate and include some consideration for the efficiency of the industry that is being regulated or the safety of which is being provided.

So I do not think the simple action of taking away from the FAA whatever mandate it has to promote aviation and separating that out from the mandate to promote safety would in fact improve the kind of safety regulation and monitoring we have. I think it would only succeed in bifurcating the system.

Senator KASTEN. I appreciate your answer, I guess, because I agree with it. I think that promoting air safety is probably the best way to promote air travel and that the two have got to go together.

One last point. One of the GAO reports that we were working with in the last set of hearings, referred to in other hearings, and also have worked on when you have appeared before us on the Transportation Appropriations Committee, we are concerned about inspectors and inspections.

One of the dangerous trends that we are seeing is a larger number of operating companies, a larger number of aircraft, greater numbers of different kinds of aircraft, and at the same time numbers of inspectors going down since deregulation 1977 or 1978, whichever base year we have used there. I think it is 1978.

I have suggested that a rough measure of the number of inspectors might be the ratio that we had before deregulation. That would mean that the FAA would have to hire in the next couple of years over 300 new inspectors.

We have also tried to get at the problem of how often an airline or an airplane or an airline operating unit should be inspected, the problem being that in certain cases certain airlines are never inspected or have never been inspected, and in certain cases airlines and groups have been inspected five and six times in a relatively short period of time.

Can you, number one, say if my rough rule of thumb makes any sense to you, or if it doesn't, how would you express the need, or how could we quantify inspectors? In other words, how many would be needed? What is the right way of defining the inspection problem and making a solution so that the FAA cannot continue to weasel itself out of it?

Mr. BURNETT. I think that rough rule makes as much sense as any other I can think of. I think, however, what the FAA is trying to do—and I commend them on that—is analyze all of their functions, and they are in a very scientific way trying to figure out exactly how many people it is going to take them to do what they have to do.

The problem is going to be not, I think, whether the FAA is planning adequately to do that, because they know the job that they have before them, but whether or not through all the other agencies that they have to interface with, the Department of Transportation, the Office of Management and Budget, and the Congress itself, whether or not they will ultimately come out with those kinds of numbers and whether or not they will be able to hire the kind of qualified people they are going to need to do that.

Senator KASTEN. That is another question. I was not trying to address that right now.

Mr. BURNETT. But I want to say that I have had some briefings on what the FAA is doing and planning for that, and the sense I have is that they are doing it right.

And I do not too often say that about the FAA, but I will say that with pleasure in this case. And I think they are very sensitive to their need to improve the quality of their surveillance, but it is going to be—obviously, when you are talking about hiring even 300 additional people over 2 or 3 years, by the time they get those in

and actually trained, we are going to have some additional time before we get the protection that we really need.

Senator KASTEN. Madam Chairman, thank you. I am happy to support Mr. Burnett's nomination.

Senator KASSEBAUM. Thank you.

Senator Gore.

Senator GORE. Thank you, Madam Chairman. I appreciate the time to question Mr. Burnett.

Mr. Burnett, on other occasions I have expressed my opinion of the job you are doing. I think you have done an excellent job there. And I, too, am pleased to support your nomination.

I have a number of questions that I would like to get your responses to. The first series of questions has to do with the FAA's handling of the Doppler radar installations. I am sure you are familiar with this issue, are you not?

Mr. BURNETT. We had an extensive Board meeting on it last Tuesday, Senator.

Senator GORE. Wind shear has recently become recognized as a cause of quite a few crashes; correct?

Mr. BURNETT. That is correct. In fact, we now have 18 since 1970 that we have attributed to wind shear as a factor and 7 of them are fatal, and I think there were about 575 deaths involved in those.

Senator GORE. So it is obviously a high priority problem in the area of air safety.

The new generation of Doppler radar technology makes it possible to identify many wind shears in time for pilots to take evasive action. Is that correct?

Mr. BURNETT. Yes. That is certainly the philosophy behind the design of that system and we believe that it will be effective in accomplishing that.

Senator GORE. Now, wind shear poses a particularly deadly threat during takeoffs and landings because the air speed of the plane is slowest during those two phases of the flight. Therefore it is more vulnerable to the pressures of wind shear or microbursts. Am I correct there?

Mr. BURNETT. Yes. And, even more importantly, since the airplane is close to the ground, it has less time to play with its altitude, which is really the factor that usually catches them is that if you lose altitude, you have less time to correct it.

Senator GORE. If you add A and B and C together then, it would seem to be particularly important to install these new Doppler radars at airport terminals where they can gather the information necessary to identify wind shears, relay them to pilots and manage the flow of traffic in a way that minimizes the loss of life and equipment due to wind shear.

Mr. BURNETT. As far as aviation safety is concerned, yes, that is the priority for Doppler radars at the terminals. Now, there has been a plan to put them in the en route environment first, but that is based on other considerations such as weather prediction and the danger to those of us in Arkansas and Kansas and Tennessee from tornadoes.

Senator GORE. But the priority has been in terminals; right?

Mr. BURNETT. As far as aviation safety, in my opinion, the priority should be the terminal.

Senator GORE. What is your opinion of the FAA's handling of this issue?

Mr. BURNETT. Well, I think the FAA, if you look back to when we first began to make recommendations in this connection, back in 1973 or 1977, they have not made as much progress as they could, I think, although looking at the time period since the Kenner, LA, accident, they probably have done a pretty good job in trying to solve the technical problems that they had.

Your questions raise the point that the planning had been to do the en route environment Doppler radar first, because the FAA wanted to piggyback resource-wise, I think, on the National Weather Service to develop a lot of this. Of course strictly from the aviation standpoint it would have been better to solve the terminal problem first, although there is a complication, as I understand it, because of the sophisticated software that has to be developed in order to allow this information that is collected by the Doppler radar to be reduced to a form that can be used either by the pilot or the controller, and that research has not completely been finished yet. So in effect we may not actually have any slowing of the final product in a way that it can be used.

Senator GORE. Well, I do not know if you are aware of the research that has been done at Memphis on the software.

Mr. BURNETT. Yes. In fact, I visited that research facility south of Memphis.

Senator GORE. I think the FAA has made a serious error that threatens lives by deeply cutting the funds for installation of Doppler radars in more terminals around the country.

Do you agree?

Mr. BURNETT. Well, I think that we certainly can improve safety. The more terminals we place it in, the safer our aviation system will be.

We at the Safety Board do not have a way of determining, because it gets into analysis that we are not able to do, exactly which facility should have Doppler radar or how many it makes sense to place it in since it is a very expensive device.

But marginally, it is not as expensive as it is once you have done the basic development of it. The marginal expense, of course, is much reduced.

Senator GORE. Well, they have cut the number of terminals due to receive Doppler radars from 105 to 15.

Do you agree that that is an unwise cut in terms of air safety?

Mr. BURNETT. I would say that it will be unfortunate in terms of air safety and the fact that if you had 105 terminal Doppler radar systems, we would have a much safer system in terms of avoiding wind shear than we do if we have 15.

I do not want to express too much confidence in cost/benefit types of studies, but obviously there is a cost/benefit question there. And I do not know what is the most appropriate number of Doppler radars for us to have, whether it is 15, 105, or more than 105.

Senator GORE. But you would agree it is probably closer to 105 than it is to 15?

Mr. BURNETT. I do not think anybody at the Board—I have never heard that opinion expressed by any of our staff as to how you

would quantify that. We do not have the analytical capabilities to do that.

What I can say is that, quite clearly, we would be safer with 105 than we would be with 15.

Senator GORE. Now, a few years from now—and I hope this does not occur—but if a few years from now at one of the 90 airports eliminated from the list, there is a crash caused by wind shear of a kind that could have been predicted by Doppler radar, then when the NTSB writes up the cause of that crash, that hypothetical crash, in my opinion it would be appropriate to list as a contributing cause the priorities established by the FAA in refusing to install the lifesaving equipment that could have prevented the crash.

Mr. BURNETT. In our last few wind shear accidents, we have listed the lack of Doppler radar as a contributing factor to the crash.

Senator GORE. So when we can see them coming in the future, we ought to act accordingly.

Now, let me move to a second topic, and that involves the flight time/duty time proposal of the FAA. Are you familiar with it?

Mr. BURNETT. The one for pilots?

Senator GORE. For the entire flight crew, including pilots.

Mr. BURNETT. Yes. In fact, I testified before their regulation by negotiation process on the flight time/duty time issue.

Senator GORE. Can you just briefly tell us whether you think their proposal is a good one or a bad one?

Mr. BURNETT. Well, I am a little bit confused about the proposal. I thought that they had basically finished their action on that several months ago. We were not entirely satisified with it. It was a much better proposal finally than it was at the time that I testified before them in which we thought that we had a very bad proposal, but it did not do all the things that we wanted it to do.

Basically, we have been concerned about the flight time/duty time regulations for these reasons. The regulations are much more lax for the commuter pilots than they are for a major carrier.

In fact, as far as the fatigue factors and the stress that comes with flying in the regional airline environment, that is probably more severe than it is for the air carrier environment, and it would suggest to us that they need to have more protection, not less, if there is going to be any difference.

You frequently find that in the commuter industry, well almost always the flight crew will be making more takeoffs and landings. That is the part where they have to work and have the most pressure on them. They are flying through weather rather than above it, and they are moving baggage when they are on the ground.

I think they ought to have more protection than any of the regulations have ever given them or they give them now. It has also been a concern of ours that the regulations were written in terms of the amount of time spent flying, not necessarily the time spent on duty. You could actually spend time on duty that ran up against the provisions that you had to have a certain amount of rest, which the FAA at one time was trying to cut down to 7 hours under some circumstances. And if you allow an hour to get to your hotel, and an hour coming back in the morning, that would be 5 hours rest. And I would not want to fly with somebody in that situation.

So we did not like the proposal that they were forwarding at the close of their regulation by negotiation. I testified on the issue. The FAA made substantial improvements in it. And I think, for instance, the Air Line Pilots Association were much better satisfied with it at the end than they were before. But it still does not give the kind of protection that the unorganized pilots need that are basically in the regional aviation environment.

Senator GORE. I might say that on the Government Affairs Committee, we had testimony relating to the Arrow air crash, about one of the charter companies where the entire flight crew was sound asleep in the cockpit. One of the flight attendants had to come up to the cockpit and get the door open and wake up the pilot, the copilot, and the navigator. It is something to think about the next time you are on one of those transatlantic flights, and it is something to think about when you are considering these flight time/duty time regulations as well.

Are you familiar with the pending one concerning flight attendants?

Mr. BURNETT. I am aware that the flight attendants are seeking some protection. Let me give you some sense of my personal concern. The Board, I do not think, has taken a position on that at all at this point. But in the investigation of the crash of the Galaxy Lockheed Electra out at Reno, we discovered that that flight crew, that cabin crew, if they had completed their flight as had been scheduled that day, would have been on duty, I think, over 24 hours.

Now, that may not be quite correct, but it is something close to that. It is just phenomenal and unacceptable.

Senator GORE. Right.

Mr. BURNETT. And that is now permitted. Now, the flight attendants have had the protection of their contractual agreements, which up to this point have been adequate to protect them from that sort of situation.

Now we see some move to increase the hours they work, and it raises the question—this is probably an isolated example on the Galaxy—but it not be a year from now or 2 years from now.

So it suggests that we ought to be on top of that issue and consider whether or not they need some protection before we get an industry that is organized in a way that they are really being exhausted to the point that they could not fulfill their safety duties in an emergency. So it would be a matter of concern.

Now, I have also expressed that it is real easy for the flight attendants to ask for protection as far as their duty time so that we will have assurance that they will be able to carry out their duties. If we are going to do that, it also raises the question if we ought not to have some guarantee that they are physically fit to carry out their duties, and that means in terms of personal strength to open the doors, that they are not under the influence of alcohol and drugs and some of those other things that we have traditionally been concerned about with pilots.

Senator GORE. Well, I think it is very significant for you as Chairman of the National Transportation Safety Board to express support for the efforts of these flight attendants, and I welcome

your comments. I do not think they have been made publicly heretofore.

I would just like to conclude by telling you again, Mr. Burnett, that I think you have done an excellent job. I wholeheartedly support your nomination to a third term as Chairman of the Board. I look forward to continuing our working relationship and look forward to working with you in the future.

Mr. BURNETT. Thank you, Senator.

Senator KASSEBAUM. I would just like to ask you, Mr. Burnett, if you would support making the NTSB recommendations mandatory.

Mr. BURNETT. We definitely would not. The Board is unanimous. As Acting Chairman Goldman testified, I believe, before this committee last week in opposing that suggestion, we believe that it would in effect create us as a second FAA, and we do not want to be that.

In effect, we would be investigating our own regulatory activities because we would then become the moving force in the regulation. I believe that the function of the Safety Board is to keep—we set the Nation's safety, transportation safety agenda. We do not have the power to do anything else but keep things on that agenda and to draw attention to the issues that we put forward, and if we then became, if our recommendations were necessarily mandatory, then we would have to have all the administrative trappings that would keep us from doing a good job of keeping these things on the agenda.

So we are not interested in that power, as unusual as it might be for a Government agency to oppose increasing its powers in this city.

Senator KASSEBAUM. Thank you very much for your interesting comments today, and I can assure you that Senator Exon and I will both do all that we can to make sure that your confirmation goes through speedily.

Mr. BURNETT. Thank you.

[Whereupon, at 3:15 p.m., the nomination hearing was adjourned.]

○

62-927 (36)